C1

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 29 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as a "Sunday School Teacher." The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the director made an erroneous conclusion of law and an erroneous conclusion of fact. Counsel submitted a timely brief stating that the statute and the regulations do not indicate that religious professionals and other religious workers are required to work full-time. Counsel asserts that the regulations and statute require only "religious ministers" to work "solely" for the church. Counsel also states that the director misread the petitioner's response to the director's request for additional information, and thereby also based the decision on an erroneous conclusion of fact.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The sole issue raised by the director to be addressed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101 (a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--

[redacted]

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in

> the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on May 24, 2002. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from May 24, 2000, until May 24, 2002. The petitioner indicated that the beneficiary last entered the United States on June 17, 2001, as an "R-1", with authorization to remain in the United States until August 11, 2002. Copies of the passport and Form I-94 were not submitted. In a letter dated April 8, 2002, the petitioner made reference to the fact that the beneficiary has worked as the Sunday School Teacher for the church "since May 2000." It is noted that this date falls more than one year prior to the beneficiary's stated entry into the United States. No additional documentation explaining this discrepancy is included in the record.

The initial petition did not specify the beneficiary's precise duties and hours spent performing various functions. In response to the director's request for additional information, the petitioner states in a letter dated September 10, 2002:

> Mr. [redacted] as stated in our original letter, is the Sunday School Teacher for our church. His duties each week include teaching bible lessons to high school and middle school young adults. The lessons are held every Sunday and every Wednesday evening. He also leads Gospel worship before each lesson in a group called the worship team. Each day requires approximately 4 hours. Mr. [redacted] and I have meetings during the week to discuss which bible and gospel lessons will be used for each lesson and worship meeting. These meetings take approximately 4 hours each week. It should be noted that in addition to the biblical teachings, Mr. [redacted] using [sic] music in his instruction with religious psalms. Mr [redacted] plays the guitar during the sessions. To prepare for these weekly lessons, Mr. [redacted] spends the average of 20 hours each week studying the New and Old Testament teachings. . .

The director's decision states that in response to the request for evidence, "the petitioner indicated that the beneficiary['s] work time averages twenty hours per week," and therefore does not qualify as full-time work. On appeal, counsel states, "The letter shows that the beneficiary spends a minimum of 12 hours each week

[redacted]

at direct Church Services, 4 hours each week working with the Pastor, and 20 hours preparing for the weekly lessons with the Gospel Team, and each lesson with the youth on Wednesday and Sunday. This is a total of 36 hours minimum work-time each week with the Church."

Counsel's statement on appeal that the beneficiary works 36 hours per week is not persuasive. A plain reading of the stated schedule above indicates that the beneficiary performs work, or preparation for work, for a total of 32 hours per week: four hours on Sunday, four hours on Wednesday; four hours of meetings per week, and 20 hours of preparation. The director did not elucidate how he arrived at the determination that the beneficiary works 20 hours per week. Therefore, the director's statement that "the beneficiary['s] work[-]time averages twenty hours per week," is withdrawn.

Despite the withdrawal of this portion of the director's statement, as noted above, the record is inconsistent concerning when the beneficiary entered the United States and began working for the petitioner. Furthermore, the petitioner has submitted cancelled pay checks, one per month, from the church to the beneficiary for the period of January 21, 2001 until June 16, 2002. If the beneficiary entered the United States on June 17, 2001, as stated on the I-360 petition, the petitioner has not accounted for its issuance of checks to the beneficiary from January 2001 until June 2001, when he would have been out of the country. Moreover, the record does not provide any objective documentation to illustrate that the beneficiary was paid for the seven months from May 2000 until January 21, 2001, a significant portion of the requisite two-year period during which the beneficiary must have been continuously engaged in religious work.

Additionally, counsel's assertion is not persuasive that the director reached an erroneous conclusion of law in finding that religious workers' employment must be full-time. The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation,

professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner has not overcome the determination of the director that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition, and the petition must be denied.

Beyond the decision of the director, the record does not reflect that the beneficiary received a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the

United States. The official must state how the alien will be solely carrying on the religious vocation and describe the terms of payment for services or other remuneration. In this case, the petitioner states that the job offer involves payment of "approximately $500.00 each month for his services as a Sunday School Teacher." The submitted cancelled checks from the church to the beneficiary, however, indicate payments as: $300 per month from January 21, 2001 until December 16, 2001; two checks on December 23, 2001, one in the amount of $2,100 and another in the amount of $500; and checks in the amount of $100 from January 1, 2002 until June 16, 2002. The petitioner's letter dated September 10, 2002, also indicates that the beneficiary "had savings in Korea and had money sent to him from Korea." This evidence does not establish that the petitioner will provide permanent full-time salaried work for the beneficiary.

Another issue not reviewed by the director that will be discussed in this proceeding involves whether the beneficiary was a member of the petitioner's religious denomination during the two-year period preceding the filing date of the petition. The petitioner's letter dated April 8, 2002, states that the beneficiary was a "teacher of religion at two Presbyterian Churches in Korea from 1989 to 2000 and at our Church from May 2000 to the present time." The letter relates that the beneficiary's father is an ordained minister and his mother is deeply involved in the Presbyterian Church. The record contains two certificates stating that the beneficiary taught at the Sungbok Central Church, Presbyterian Korea Christianity, and was a "weekend teacher" at Hwapyung Church, Presbyterian Korea Christianity. We note that the petitioner is a Baptist Church affiliated with the Hawaii Pacific Baptist Convention. The record does not reflect when and by what methods the beneficiary became recognized as a Baptist.

Other issues not reviewed by the director that will be discussed in this proceeding involve whether the beneficiary is qualified to engage in a religious vocation or occupation, and whether the position offered is a qualifying religious vocation or occupation. The petitioner's letter of April 8, 2002, indicates that the beneficiary has a bachelors degree, a masters degree in engineering, and that he completed bible study courses at the "Bible Correspondence Center" at an unspecified location, for an unspecified amount of time. No transcripts or documentation of any of the studies were submitted. Moreover, the petitioner did not substantiate the training and educational requirements that must be met to fulfill the duties of the proffered position. The director requested a detailed description of the work to be done, the standards of education, training, and experience necessary to do the

job, and an explanation of how the job relates to a traditional religious function. The petitioner did not respond to this request.

Discrepancies encountered in the evidence presented call into question the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.